

1-1 By: Harris S.B. No. 1026
1-2 (In the Senate - Filed March 1, 2011; March 16, 2011, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 13, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 13, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1026 By: Harris

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the powers and duties of an attorney ad litem appointed
1-11 for a parent or an alleged father in certain suits affecting the
1-12 parent-child relationship.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Part 1, Subchapter B, Chapter 107, Family Code,
1-15 is amended by adding Sections 107.0131, 107.0132, and 107.0133 to
1-16 read as follows:

1-17 Sec. 107.0131. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR
1-18 PARENT. (a) An attorney ad litem appointed under Section 107.013
1-19 to represent the interests of a parent:

1-20 (1) shall:

1-21 (A) subject to Rules 4.02, 4.03, and 4.04, Texas
1-22 Disciplinary Rules of Professional Conduct, and within a reasonable
1-23 time after the appointment, interview:

1-24 (i) the parent, unless the parent's
1-25 location is unknown;

1-26 (ii) each person who has significant
1-27 knowledge of the case; and

1-28 (iii) the parties to the suit;

1-29 (B) investigate the facts of the case;

1-30 (C) to ensure competent representation at
1-31 hearings, mediations, pretrial matters, and the trial on the
1-32 merits:

1-33 (i) obtain and review copies of relevant
1-34 records and all court files in the suit during the attorney ad
1-35 litem's course of representation; and

1-36 (ii) when the attorney ad litem considers
1-37 necessary, conduct formal discovery under the Texas Rules of Civil
1-38 Procedure or the discovery control plan;

1-39 (D) take any action consistent with the parent's
1-40 interests that the attorney ad litem considers necessary to
1-41 expedite the proceedings;

1-42 (E) encourage settlement and the use of
1-43 alternative forms of dispute resolution;

1-44 (F) review and sign, or decline to sign, a
1-45 proposed or agreed order affecting the parent;

1-46 (G) meet before each court hearing with the
1-47 parent, unless the court:

1-48 (i) finds at that hearing that the attorney
1-49 ad litem has shown good cause why the attorney ad litem's compliance
1-50 is not feasible; or

1-51 (ii) on a showing of good cause, authorizes
1-52 the attorney ad litem to comply by conferring with the parent, as
1-53 appropriate, by telephone or video conference;

1-54 (H) become familiar with the American Bar
1-55 Association's standards of practice for attorneys who represent
1-56 parents in abuse and neglect cases;

1-57 (I) complete at least three hours of continuing
1-58 legal education relating to child protection law as described by
1-59 Subsection (b) as soon as practicable after the attorney ad litem is
1-60 appointed, unless the court finds that the attorney ad litem has
1-61 experience equivalent to that education; and

1-62 (J) abide by the parent's objectives of
1-63 representation;

(2) must be trained in child protection law or have experience determined by the court to be equivalent to that training; and

(3) is entitled to:

(A) request clarification from the court if the role of the attorney ad litem is ambiguous;

(B) request a hearing or trial on the merits;

(C) consent or refuse to consent to an interview of the parent by another attorney;

(D) receive a copy of each pleading or other paper filed with the court;

(E) receive notice of each hearing in the suit;

(F) participate in any case staffing conducted by the Department of Family and Protective Services in which the parent is invited to participate, including, as appropriate, a case staffing to develop a family plan of service, a family group conference, a permanency conference, a mediation, a case staffing to plan for the discharge and return of the child to the parent, and any other case staffing that the department determines would be appropriate for the parent to attend, but excluding any internal department staffing or staffing between the department and the department's legal representative; and

(G) attend all legal proceedings in the suit.

(b) The continuing legal education required by Subsection (a)(1)(I) must:

(1) be low-cost and available to persons throughout this state, including on the Internet provided through the State Bar of Texas; and

(2) focus on the duties of an attorney ad litem in, and the procedures of and best practices for, a proceeding under Chapter 262 or 263.

Sec. 107.0132. POWERS AND DUTIES OF ATTORNEY AD LITEM FOR ALLEGED FATHER. (a) An attorney ad litem appointed under Section 107.013 to represent the interests of an alleged father shall:

(1) conduct an investigation regarding the petitioner's due diligence in locating the alleged father, including by verifying that the petitioner has obtained a certificate of the results of a search of the paternity registry under Chapter 160;

(2) interview any party or other person who has significant knowledge of the case who may have information relating to the identity or location of the alleged father; and

(3) conduct an independent investigation to identify or locate the alleged father, as applicable.

(b) If the attorney ad litem identifies and locates the alleged father, the attorney ad litem shall:

(1) provide to each party and the court the alleged father's name, address, and any other locating information; and

(2) if appropriate, request the court's approval for the attorney ad litem to assist the alleged father in establishing paternity.

(c) If the alleged father is adjudicated to be a parent of the child and is determined by the court to be indigent, the court may appoint the attorney ad litem to continue to represent the father's interests as a parent under Section 107.013(a)(1) or (c).

(d) If the attorney ad litem is unable to identify or locate the alleged father, the attorney ad litem shall submit to the court a written summary of the attorney ad litem's efforts to identify or locate the alleged father with a statement that the attorney ad litem was unable to identify or locate the alleged father.

Sec. 107.0133. DISCIPLINE OF ATTORNEY AD LITEM FOR PARENT OR ALLEGED FATHER. An attorney ad litem appointed for a parent or an alleged father who fails to perform the duties required by Section 107.0131 or 107.0132, as applicable, is subject to disciplinary action under Subchapter E, Chapter 81, Government Code.

SECTION 2. Sections 107.0131, 107.0132, and 107.0133, Family Code, as added by this Act, apply only to an attorney ad litem in a suit affecting the parent-child relationship appointed

3-1 on or after the effective date of this Act. An attorney ad litem
3-2 appointed before that date is governed by the law in effect on the
3-3 date the attorney ad litem was appointed, and the former law is
3-4 continued in effect for that purpose.

3-5 SECTION 3. This Act takes effect September 1, 2011.

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